


CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

NOTICE OF EFFECTIVENESS OF ORDER NO. R5-2006-0025

RATIFYING THE 16 MARCH 2006 SETTLEMENT AGREEMENT  
BETWEEN  
CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD  
AND  
HILMAR CHEESE COMPANY, INC., AND HILMAR WHEY PROTEIN, INC.  
MERCED COUNTY

Notice is hereby given that the action styled "Hilmar Cheese Company, Inc., and Hilmar Whey Protein, Inc. v. California Regional Water Quality Control Board for the Central Valley Region," Merced County Superior Court, Case No. 148824, was dismissed by Hilmar Cheese Company, Inc., and Hilmar Whey Protein, Inc., without prejudice on March 17, 2006, in accordance with the "Dismissal and Tolling Agreement" presented to the Regional Board at its March 16, 2006 meeting, a true copy of which is attached hereto as Attachment I. A true copy of the entered "Request for Dismissal" without prejudice is attached hereto as Attachment II.

Accordingly, the condition to the Regional Board's acceptance of the 16 March 2006 Settlement Agreement in Regional Board Order No. R5-2006-0025 ("Order") has been removed, and the Order is unconditional and effective. As provided in the Order, any petition for review of the Order pursuant to California Water Code section 13320 must be received by the State Water Resources Control Board within 30 days of the Board's action which took place on March 16, 2006. I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is true and correct.



PAMELA C. CREEDON, Executive Officer

## DISMISSAL AND TOLLING AGREEMENT

This Dismissal and Tolling Agreement ("Agreement"), dated March 16, 2006, is entered into by and between Hilmar Cheese Company, Inc., and Hilmar Whey Protein, Inc. (hereinafter collectively "Hilmar") and the California Regional Water Quality Control Board for the Central Valley Region ("Regional Board"). Hilmar and the Regional Board are sometimes referred to individually as "Party" and collectively as "Parties."

### RECITALS

A. There is pending before the Regional Board an enforcement action against Hilmar – Administrative Civil Liability Complaint ("ACLC") No. R5-2005-0501 – in which the Executive Officer of the Regional Board has sought the imposition of administrative civil liability against Hilmar.

B. In that enforcement proceeding, Hilmar and Prosecution Staff have entered into a Revised Settlement Agreement ("the Revised Settlement Agreement") that is set for possible approval and ratification by the Regional Board on March 16, 2006.

C. If approved by the Regional Board and not reversed, overturned or materially altered on appeal, the Revised Settlement Agreement would resolve all pending issues in the ACLC proceeding.

D. There is also pending in the Merced County Superior Court a certain action entitled *Hilmar Cheese Company, Inc., and Hilmar Whey Protein, Inc. v. California Regional Water Quality Control Board for the Central Valley Region*, Merced Superior Court Case No. 148824, in which Hilmar has filed a first amended and supplemental petition for writ of mandate and complaint for declaratory relief challenging the lawfulness of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins ("the Basin Plan") and the Water Quality Objectives established by the Basin Plan ("the Basin Plan Litigation").

E. The Revised Settlement Agreement does not purport to resolve, and does not resolve, the issues raised by the Basin Plan Litigation.

F. To the extent reasonably possible, the Parties would like to resolve all outstanding disputed issues between them.

G. The Parties desire to enter into a dismissal and tolling agreement on the following terms and conditions.

NOW, THEREFORE, for good and valuable consideration, the existence and sufficiency of which the Parties hereby acknowledge, IT IS HEREBY AGREED AS FOLLOWS:

## AGREEMENT

1. Agreement Conditioned on Approval of Revised Settlement Agreement by Regional Board. This Agreement is expressly conditioned upon the unconditional approval and ratification of the Revised Settlement Agreement in ACLC No. R5-2005-0501 by the Regional Board at its public meeting of March 16/17, 2006 (with any further modifications as may be agreed to by the parties to the Revised Settlement Agreement prior to such approval and ratification).

2. Dismissal of the Basin Plan Litigation Without Prejudice. Hilmar agrees that within fifteen (15) business days of the Regional Board's unconditional approval and ratification of the Revised Settlement Agreement in ACLC No. R5-2005-0501, as provided in Paragraph 1 above, Hilmar will dismiss its first amended and supplemental petition for a writ of mandate and complaint for declaratory relief in the Basin Plan Litigation, and the entire Basin Plan Litigation, without prejudice.

3. Tolling Agreement. The Regional Board agrees that this Agreement shall act to toll completely any possible statutes of limitation, laches or any other time-bar defenses that may operate in favor of the Regional Board in connection with the Hilmar's filing or otherwise initiating or reinstating any lawsuit, action, causes of action, claims or any other legal proceeding against the Regional Board challenging the lawfulness of the Basin Plan, the Water Quality Objectives contained in the Basin Plan or any Waste Discharge Requirements based on such Water Quality Objectives only from the date Hilmar dismisses the Basin Plan Litigation without prejudice until the date of Hilmar's initiation or reinstatement of the lawsuit, action, causes of action, claims or other legal proceeding against the Regional Board.

4. No Effect on Any Earlier Tolling, Any Claims, or Any Defenses. The Tolling Agreement set forth in Paragraph 3 above is intended to preserve the *status quo* at the time this Agreement is executed. Nothing in this Agreement shall constitute, effect, be construed or be asserted by or on behalf of any Party, to waive, restrict, negate or supersede any other tolling of any limitations, by common law, statute, equity, or otherwise prior to or subsequent to the date Hilmar dismisses the Basin Plan Litigation without prejudice pursuant to this Agreement, and any such tolling rights are expressly retained and supplemented by this Agreement. Further, nothing in this Agreement is intended to waive or limit the existing claims or defenses of any Party.

5. Persons and Entities to Be Bound. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns. This Agreement shall be non-assignable and non-transferable.

6. Warranties of Authority. Each of the undersigned represents that he or she is duly authorized to enter into this Agreement on behalf of the Party or Parties indicated.

7. Costs of the Basin Plan Litigation. Each of the Parties agrees that each Party will bear its own costs and attorneys' fees incurred in connection with its litigation of the Basin Plan Litigation.

8. Limitations on Initiation, Filing and/or Reinstatement of the Basin Plan Litigation. Notwithstanding the fact that Hilmar's dismissal of the Basin Plan Litigation is "without prejudice," the Parties agree that Hilmar will not initiate, file, and/or reinstate any lawsuit, action, causes of action, claims or any other legal proceeding against the Regional Board challenging the lawfulness of the Basin Plan or the Water Quality Objectives contained in the Basin Plan or any Waste Discharge Requirements based on the Basin Plan and/or Water Quality Objectives except in one of the following circumstances: (1) if the Regional Board commences or refers for commencement any new administrative or judicial enforcement action against Hilmar based on the allegedly unlawful Basin Plan, Water Quality Objectives or Waste Discharge Requirements; (2) if the Regional Board issues new Waste Discharge Requirements for Hilmar based on the allegedly unlawful Basin Plan or Water Quality Objectives; or (3) if the Regional Board imposes upon Hilmar a major substantive change in an existing Regional Board order, including, but not limited to, the selection and imposition upon Hilmar of a remedial alternative under Cleanup and Abatement Order No R5-2004-0722 that is based on the allegedly unlawful Basin Plan, Water Quality Objectives or Waste Discharge Requirements. Moreover, the Parties agree that Hilmar may not initiate, file, and/or reinstate any such lawsuit, action, causes of action, claims or other legal proceeding against the Regional Board unless, at the time it does so, it is in compliance with the Revised Settlement Agreement, including any then effective Interim Operating Requirements contained in the Revised Settlement Agreement.

9. Initiation, Filing and/or Reinstatement of the Basin Plan Litigation If Regional Board Approval of Revised Settlement Agreement is Reversed, Vacated, Overturned or Materially Altered on Appeal or Review. Notwithstanding the limitations of Paragraph 8 above, if the Regional Board's approval of the Revised Settlement Agreement in ACLC R5-2005-0501 is reversed, vacated, overturned or materially altered by the State Water Resources Control Board or by a court of competent jurisdiction on appeal or review of the Regional Board's approval of the Revised Settlement Agreement, the Parties agree that Hilmar may, to the extent allowed by law, initiate, file, and/or reinstate, and may prosecute without limitation, any lawsuit, action, causes of action, claims or any other legal proceeding against the Regional Board challenging the lawfulness of the Basin Plan, the Water Quality Objectives contained in the Basin Plan or any Waste Discharge Requirements based on such Basin Plan and/or Water Quality Objectives.

10. Venue. The Parties agree that the proper venue for any such lawsuit, action or other legal proceeding as described in Paragraphs 8 and/or 9 above is the Merced County Superior Court.

Dated: March 16, 2006

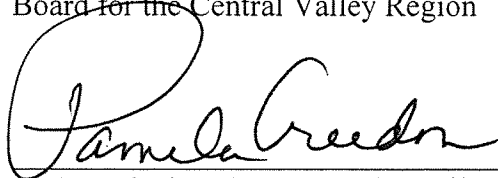
Hilmar Cheese Company, Inc., and Hilmar  
Whey Protein, Inc.

By

  
John Jeter, CEO and President

Dated: March 16, 2006

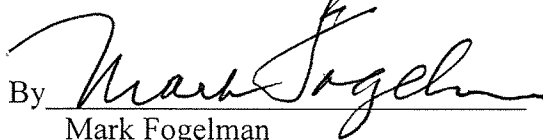
California Regional Water Quality Control  
Board for the Central Valley Region



Pamela Creedon, Executive Officer

Dated: March 16, 2006

APPROVED AS TO FORM:  
Steefel, Levitt & Weiss, P.C.

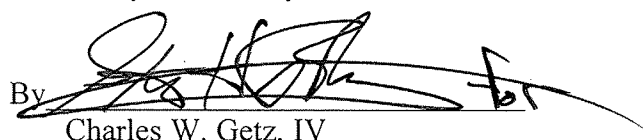
By 

Mark Fogelman

Counsel for Hilmar Cheese Company, Inc.,  
and Hilmar Whey Protein, Inc.

Dated: March 16, 2006

APPROVED AS TO FORM:  
Bill Lockyer, Attorney General of California

By 

Charles W. Getz, IV

Counsel for the California Regional Water  
Quality Control Board for the Central Valley  
Region

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Mark Fogelman (SB# 50510) Craig Bloomgarden (SB# 110241) STREFFEL, LEVITT & WEISS One Embarcadero Center, 30th Floor San Francisco, CA 94111		TELEPHONE NO.: (415) 788-0900	FILED FOR COURT USE ONLY MERCED COUNTY 06 MAR 17 PM 12:45 CLERK OF THE SUPERIOR COURT BY <u>RUTH GALLAGHER</u> DEPUTY
ATTORNEY FOR (Name): Hilmar Cheese Co., Hilmar Whey Protein, Inc. Insert name of court and name of judicial district and branch court, if any: SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED			
PLAINTIFF/PETITIONER: Hilmar Cheese Company, Hilmar Whey Protein, Inc. DEFENDANT/RESPONDENT: California Regional Water Quality Control Board for the Central Valley Region			
<b>REQUEST FOR DISMISSAL</b> <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Petition for writ of mandate, writ of administrative mandamus, and		CASE NUMBER: 148824	

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

**1. TO THE CLERK:** Please dismiss this action as follows:

- a. (1) ☐ With prejudice      (2) ☒ Without prejudice
- b. (1) ☐ Complaint      (2) ☐ Petition  
 (3) ☐ Cross-complaint filed by (name):  
 (4) ☐ Cross-complaint filed by (name):  
 (5) ☒ Entire action of all parties and all causes of action  
 (6) ☐ Other (specify):

**BY FAX**

on (date):  
on (date):

Date: March 17, 2006

Mark Fogelman

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

\* If dismissal requested in of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

  
(SIGNATURE)

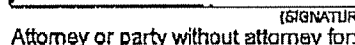
Attorney or party without attorney for, Hilmar Cheese Company, Hilmar Whey Protein, Inc.

☒ Plaintiff/Petitioner      ☐ Defendant/Respondent  
☐ Cross-complainant

**2. TO THE CLERK:** Consent to the above dismissal is hereby given.\*\*

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

  
(SIGNATURE)

Attorney or party without attorney for:

\*\* If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 587(f) or (j).

☐ Plaintiff/Petitioner      ☐ Defendant/Respondent  
☐ Cross-complainant

(To be completed by clerk)

3. ☒ Dismissal entered as requested on (date): **MAR 17 2006**
4. ☐ Dismissal entered on (date):      as to only (name):
5. ☐ Dismissal not entered as requested for the following reasons (specify):

6. ☐ a. Attorney or party without attorney notified on (date):  
 b. Attorney or party without attorney not notified. Filing party failed to provide  
☐ a copy to conform      ☐ means to return conformed copy

Date: **MAR 17 2006**

**KATHLEEN GOETSCH**

Clerk, by

**RUTH GALLAGHER**

, Deputy

Form Adopted by the  
Judicial Council of California  
962(u)(5) (Rev. January 1, 1997)  
Mandatory Form

**REQUEST FOR DISMISSAL**

Legal  
Solutions  
Co. Plus

Code of Civil Procedure, § 581 et seq.  
Cal. Rules of Court, rules 303, 1233

**PROOF OF SERVICE**

I, Michelle Chavez, declare as follows:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is STEEFEL, LEVITT & WEISS, One Embarcadero Center, 30th Floor, San Francisco, California 94111-3719. On March 17, 2006, I served the within:

**REQUEST FOR DISMISSAL**

on the interested parties in this action addressed as follows:

Charles W. Getz IV  
Deputy Attorney General  
State of California - Office of the  
Attorney General  
Suite 11000  
455 Golden Gate Avenue  
San Francisco, CA 94102-7004

Melissa A. Thorne  
Nicole E. Granquist  
DOWNEY BRAND LLP  
555 Capitol Mall, 10th Floor  
Sacramento, CA 95814



(BY MAIL) By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Steefel, Levitt & Weiss, San Francisco, California following ordinary business practice. I am readily familiar with the practice at Steefel, Levitt & Weiss for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 17, 2006, at San Francisco, California.

  
Michelle Chavez